

COURT FILE NUMBER 1801-05326
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT ATB FINANCIAL
RESPONDENTS GEMINI CORPORATION AND GEMEC SERVICES LTD.
DOCUMENT **SECOND REPORT OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS COURT APPOINTED RECEIVER AND MANAGER OF GEMINI CORPORATION AND GEMEC SERVICES LTD.**

November 19, 2018

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

RECEIVER

FTI Consulting Canada Inc.
Suite 1610, 520 Fifth Avenue S.W.
Calgary, AB T2P 3R7
Deryck Helkaa / Dustin Olver
Telephone: (403) 454-6031 / (403) 454-6032
Fax: (403) 232-6116
E-mail: deryck.helkaa@fticonsulting.com
dustin.olver@fticonsulting.com

COUNSEL

Fasken Martineau DuMoulin LLP
Suite 3400, 350 Seventh Avenue S.W.
Calgary, AB T2P 3N9
Travis Lysak
Mihai Tomos
Telephone: (403) 261-5501 / (587) 233-4107
Fax: (403) 261-5351
Email: tlysak@fasken.com
mtomos@fasken.com

INTRODUCTION

1. On April 19, 2018 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all the assets, undertakings and properties (the “**Property**” or “**Business**”) of Gemini Corporation (“**Gemini**”) and Gemec Services Ltd. (“**Gemec**” and collectively with Gemini, the “**Debtors**” or the “**Company**”) pursuant to an Order of the Honourable Justice Romaine (the “**Receivership Order**”) pronounced in the Court of Queen’s Bench of Alberta Court File Number 1801-05326 (the “**Receivership Proceedings**”).
2. The Receivership Order authorized the Receiver, among other things, to manage, operate and carry on the Business of the Company, to market any or all of the Property including advertising and soliciting offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver. Any sale of the Property in excess of a value of \$1,000,000 was subject to further approval of the Court in the Receivership Proceedings.
3. The Receiver’s reports and other publicly available information filed in connection with the Receivership Proceedings are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/Gemini> (the “**Receiver’s Website**”).
4. On September 17, 2018, this Honourable Court granted an Order (the “**Sale Approval Order**”) which, among other things, authorized and approved the sale transaction (the “**Transaction**”) of the Debtors fabrication business (“**Fabrication Business**”) to 2129156 Alberta Ltd. (the “**Purchaser**”) pursuant to the terms of the purchase and sale agreement between the Receiver and the Purchaser, dated September 10, 2018 (the “**Purchase Agreement**”).

5. The purpose of this report (“**Second Report**”) is to provide this Honourable Court with:
- (a) a summary of the activities of the Receiver since the First Report of the Receiver dated September 11, 2018 (the “**First Report**”), including its statement of receipts and disbursements from the Date of Appointment to November 19, 2018;
 - (b) details of the secured and potential priority claims in the Receivership Proceedings and recommended distribution to such creditors;
 - (c) a summary of the estimated net proceeds available for distribution (the “**Interim Distribution**”) to ATB Financial (“**ATB**” or the “**Secured Creditor**”); and
 - (d) a summary of remaining tasks to complete the administration of the Receivership Proceedings.
6. The Receiver is requesting the following relief from this Honourable Court at the application it is bringing on November 27, 2018 (the “**Application**”):
- (a) approval of the activities of the Receiver since the Date of Appointment, including its receipts and disbursements; and
 - (b) authorization to make the Interim Distribution to the Secured Creditor and to retain the Holdbacks (as defined below) respecting any potential priority creditor claims, as set out below.

TERMS OF REFERENCE

7. In preparing this Second Report, the Receiver has relied upon audited and unaudited financial information, other information available to the Receiver and, where appropriate, the Company's books and records and discussions with various parties (collectively, the "**Information**").
8. Except as described in this Second Report:
 - (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this Second Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
9. Future oriented financial information reported or relied on in preparing this Second Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
10. The Receiver has prepared this Second Report in support of the Application. This Second Report should not be relied on for other purposes.
11. Information and advice described in this Second Report that has been provided to the Receiver by its legal counsel, Fasken Martineau DuMoulin LLP (the "**Receiver's Counsel**"), was provided to assist the Receiver in considering its course of action, is not intended as legal or other advice to, and may not be relied upon by, any other person.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the First Report.

ACTIVITIES OF THE RECEIVER

13. Since the date of the First Report the Receiver, among other things:
- (a) closed the Transaction, collected the net proceeds and worked with the Purchaser and remaining employees of Gemini to transition the Fabrication Business to the Purchaser pursuant to the terms of a transitional services agreement between the Receiver and the Purchaser (the “TSA”);
 - (b) facilitated the wind-down of the Environmental Services Division including the auction of the Environmental Assets in accordance with paragraph 3(1) of the Receivership Order, which auction realized proceeds in the amount of approximately \$167,000. As none of the individual sales exceeded \$100,000 and the aggregate consideration was less than \$1,000,000, the Receiver did not require Court approval of the auction of the Environmental Assets;
 - (c) facilitated the filing of claims on behalf of employees who were determined to have claims under the *Wager Earner Protection Program Act (Canada)* (the “WEPPA”);
 - (d) continued to work to recover accounts receivable owed to the Company, including working on the New Projects (as described below);
 - (e) vacated various premises that had been occupied by the Company;
 - (f) responded to requests for information from creditors, employees and other stakeholders; and

- (g) corresponded with and reviewed various claims from creditors asserting secured and priority claims including the Canada Revenue Agency (“CRA”) and various creditors which have filed liens (the “**Lien Claimants**”).

The Transaction

- 14. The Sale Approval Order authorized and approved the Transaction between the Receiver and the Purchaser and the Transaction closed on October 1, 2018.
- 15. On October 10, 2018, the Receiver filed the Receiver’s Certificate verifying that the conditions to closing as set out in the Purchaser Agreement had be satisfied and the Transaction had been completed to the satisfaction of the Receiver.
- 16. Effective September 30, 2018, the Receiver terminated all Gemec and Gemini employees, apart from four Gemini employees (the “**Remaining Employees**”). The Receiver understands that the Purchaser concurrently rehired the majority of the terminated employees.
- 17. Pursuant to the terms of the Purchase Agreement the Receiver and the Purchaser entered into the TSA which, among other things, requires the Receiver and/or the Remaining Employees to provide certain services to the Purchaser for an initial term of sixty (60) days, subject to extension by mutual agreement. The Purchaser is required to reimburse the Receiver for certain direct costs under the terms of the TSA.
- 18. Since closing the Transaction, the Receiver and the Purchaser have continued to work in good faith and in consultation with the Remaining Employees to transition the Fabrication Business to the Purchaser. The Remaining Employees have also assisted the Receiver with and various tasks required to be complete the administration of the Receivership Proceedings.

19. The initial term of the TSA is set to expire on November 29, 2018. The Receiver is currently in discussions with the Purchaser to determine if an extension to the initial term of the TSA is required. The Receiver does not anticipate that the TSA will need to be extended beyond a further thirty days.

Leased Premises

20. Upon its appointment, the Receiver maintained the Company's leased premises in Calgary, Ponoka, Fort Saskatchewan (shop), Alberta and Fort St. John, British Columbia on a month to month basis to allow for an orderly realization of the associated assets.
21. The Receiver subsequently vacated the Company's leased premise in Fort Saskatchewan (shop) at the end of the term and disclaimed its interest in the Fort St. John office, each effective September 30, 2018.
22. After completing the Transaction, the Receiver understands that the Purchaser entered into a new lease agreement with the landlord of the Ponoka fabrication facility and the Debtors ceased occupying the premise effective October 1, 2018.
23. As set out in the First Report, the Receiver continues to occupy only a small portion of the Company's formerly leased premise in Calgary, subject to the terms of a revised month to month agreement between the Receiver and the landlord. At this time the Receiver does not anticipate that the Debtor will occupy the premise past January 31, 2019.

Accounts Receivable

24. As described in the First Report, the Debtors had several ongoing projects at the Date of Appointment with customers, including one with Canadian Natural Resources Limited ("**CNRL**"), two with Husky Energy Inc. ("**Husky**") and one with Inter Pipeline Ltd. ("**IPL**") (collectively, the "**Ongoing Projects**").

25. During the Receivership Proceedings, the Receiver managed the Ongoing Projects which were substantially completed by the end of August 2018.
26. In August 2018, as the Ongoing Projects were nearing completion, the Receiver continued negotiations with the Purchaser for the sale of the Fabrication Business, however a definitive agreement had not been signed. To maintain the viability of the Transaction, the Receiver commenced two new projects with Husky (the “**New Projects**”) with the understanding that if the Fabrication Business was sold the Receiver would bill for work completed up to closing and transfer the New Projects to the new owner.
27. The New Projects allowed the Receiver to:
 - (a) continue operating the Fabrication Business and maintain many of the employees while finalizing the sale of the Fabrication Business; and
 - (b) generate additional recoveries for the estate.
28. As a result of the above, the Receiver continues collection efforts in connection with the remaining outstanding accounts receivable of approximately \$2.4 million as at November 19, 2018 and unbilled amounts of approximately \$1.3 million.
29. Approximately \$1.0 million of the accounts receivable is currently subject to a dispute between the Receiver, on behalf of the Debtors, and the customer in connection with a project that was completed prior to the Receivership Proceedings. The Receiver and the customer continue to have discussions and are working towards a resolution to the matter.

Alberta Human Rights Commission

30. After the Date of Appointment, the Receiver became aware of a complaint (the “**Employee Complaint**”) from the Alberta Human Rights Commission (the “**AHRC**”) in connection with the termination of a former Gemini employee. On April 27, 2018, the Receiver’s counsel responded indicating that the Receivership Order provided for a stay of proceedings which applied to the Employee Complaint and that it would not consent to lift the stay of proceedings at the time.
31. On September 5, 2018, and in response to a follow up letter from the AHRC, the Receiver’s Counsel advised that due to the fact that the claim of the Secured Creditor would not be satisfied in full, even if successful, the Employee Complaint would rank in priority subsequent to the Secured Creditor.
32. The AHRC has been served with a copy of the materials in connection with this application.

Alberta Labour Relations Board

33. After the Date of Appointment, the Receiver became aware of a letter dated April 20, 2018, from the Alberta Labour Relations Board (the “**ALRB**”) in connection with an unfair labour practices complaint alleged against the Debtors (the “**Complaint**”). On April 27, 2018, the Receiver’s Counsel responded indicating that the Receivership Order provided for a stay of proceedings which applied to the Complaint and that it would not consent to lift the stay of proceedings at the time.
34. On June 8, 2018, the Receiver’s Counsel and counsel for the parties that commenced the Complaint agreed to a *sine die* adjournment of the Complaint proceedings. No further steps have taken place since June 8, 2018.
35. The ALRB has been served with a copy of the materials in connection with this application.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

36. The Receiver's statement of receipts and disbursements from the Date of Appointment to November 19, 2018 is summarized below:

Statement of Receipts and Disbursements for the period of April 19, 2018 to November 19, 2018	
CAD \$	Cumulative
Receipts	
Accounts receivable	20,302,089
Transaction proceeds	2,760,000
GST / PST collected	1,443,114
Receiver's Borrowings	1,000,000
Other receipts	355,023
Auction proceeds	285,178
Total - Receipts	26,145,404
Disbursements	
Payroll and employee related obligations	7,484,564
Operating expenses	6,526,544
GST / PST paid	1,144,416
Repayment of Receiver's Borrowings	1,000,000
G&A	914,924
Receiver's fees and expenses	658,403
Receiver's Counsel's fees and disbursements	295,275
Other professional fees	130,000
Total - Disbursements	18,154,126
Net Cash on Hand	7,991,278

- (a) Accounts receivable, amounts collected by the Receiver, with the assistance of the Remaining Employees, in connection with the Ongoing Projects, the New Projects and amounts owing prior to the Date of Appointment;
- (a) Transaction proceeds, the net proceeds from the sale of the Fabrication Business;
- (b) GST / PST collected in connection with the accounts receivable;

- (c) Auction proceeds from the sale of the Environmental Assets and the Field Assets (each as described in the First Report);
 - (d) Receiver's Borrowings – amounts borrowed in accordance with the terms of the Receivership Order;
 - (e) Payroll and employee related obligations – costs relating to employee and contractor wages, payroll remittances, benefits and payroll service charges. At the Date of Appointment there were approximately 317 employees and contractors;
 - (f) Operating expenses relating to operating the Business since the Date of Appointment, including material purchases to support the Ongoing Projects and New Projects;
 - (g) Repayment of Receiver's Borrowings – repayment of amounts borrowed in accordance with the terms of the receivership Order;
 - (h) G&A includes general and administrative costs of the of the receivership, including among other things, costs related to the office lease, insurance and utilities;
 - (i) Receiver's fees and expenses and Receiver's Counsel's fees and disbursements for professional services rendered to October 31, 2018; and
 - (j) Other professional fees include fees and expenses related to the marketing agent in the sales process.
37. As at November 19, 2018 the Receiver held approximately \$8.0 million in cash on hand.

DETAILS OF SECURED AND POTENTIAL PRIORITY CLAIMS

38. The Receiver is aware of the following secured claims, charges and liens that are owed by the Company, either pursuant to statute, or which have been registered against the Property.

Secured Claim

39. As described in the Affidavit of Trina Holland sworn on April 17, 2018, the Secured Creditor in these Receivership Proceedings was owed approximately \$12.8 million plus all accruing interest and incurred legal fees and other costs pursuant to the terms of a loan facility (the “**ATB Secured Loan**”) dated May 25, 2017 and amended December 19, 2017. The ATB Secured Loan is secured by a General Security Agreement dated May 25, 2017 and a Securities Pledge Agreement dated May 25, 2017 (the “**ATB Security**”). The ATB Security has been registered at the Alberta Personal Property Registry.

Wage Earner Protection Program

40. As at the Date of Appointment, several former employees were owed termination and/or severance pay relating to certain restructuring efforts undertaken by the Company prior to the Receivership Proceedings. Additionally, employees that were terminated during the Receivership Proceedings on behalf of the Debtors were not paid vacation pay that accrued prior to the Date of Appointment or termination and/or severance pay.
41. In accordance with the WEPPA, the Receiver made the former employees aware of the existence of such program and advised that the Receiver would review the Company’s books and records and identify employees who were owed eligible wages under the Wage Earner Protection Program (the “**WEPP**”).

42. After reviewing the Company's books and records, and with the assistance of the Company, the Receiver determined that approximately \$355,879 was owed to former employees for unpaid vacation and termination and severance pay, which are considered eligible wages under the WEPP (the "**WEPP Claims**").
43. Pursuant to section 81.4(4) of the *Bankruptcy and Insolvency Act*, the WEPP Claims are secured against the Company's current assets to the extent of \$2,000 per employee for wages and compensation (including vacation pay, but excluding severance and termination pay).
44. The Receiver has yet to receive the details of Service Canada's subrogated claim. However, it estimates that the claim submitted by Service Canada ranking in priority to the Secured Creditor will be approximately \$31,837 ("**Expected Priority WEPP Claim**"). The Receiver recommends holding back funds sufficient to satisfy the full amount of the Expected Priority WEPP Claim.
45. The Receiver notes that the Expected Priority WEPP Claim only relates to former Gemini employees as Gemec had no current assets at the Date of Appointment. Moreover, the Receiver understands that, as of the Appointment Date, all employees of Gemec had been paid wages and vacation pay in full.

Deemed Trust Claim

46. The Receiver has received a notice of assessment from the CRA stating that Gemini has unremitted GST/HST in the amount of \$256,960.59 related to the pre-receivership period. The Receiver anticipates that the CRA will be asserting a deemed trust claim in the amount of \$250,184.72 under subsection 222(3) of the *Excise Tax Act*. However, the CRA has yet to file a claim with the Receiver.
47. In anticipation of such potential claim being made, the Receiver recommends holding back funds in the amount of \$250,184.72 pending either a bankruptcy filing and/or further discussion with the CRA.

Builders' Liens

48. The Receiver has been made aware of six (6) liens, two of which relate to the claim Hi-Way 9 Express Ltd. registered in both Alberta and Saskatchewan, that have been registered by the Lien Claimants in Alberta and Saskatchewan against lands owned by customers of the Company (the “**Customers**”) where modules constructed by the Company are currently affixed (the “**Liens**”). The Liens have impacted the Receivership Proceedings as, subsequent to the filing of the Liens, certain Customers have withheld payments owed to the Company.
49. The Receiver has been active in discussions with the Lien Claimants to determine if the Liens are valid and enforceable and, moreover, has paid \$166,045.03 into Court or in trust with the Receiver’s Counsel in connection with the claims of Onsite Blast Ltd. and Tomco Industrial Ltd. (the “**Trust Funds**”) pending further analysis to determine the amount and the priority of such claims (vis-à-vis the security of ATB).
50. The Receiver and the Receiver’s Counsel are continuing to review the claims of Hi-Way 9 Express Ltd. and Red River Galvanizing to determine the amount and the priority of such claims (vis-à-vis the security of ATB) and is recommending a holdback of \$86,666.14 (the “**Lien Fund**”) and will report to this Honourable Court prior to making a distribution from the Lien Fund.
51. The claim of Metalex Metal Buildings Inc. was registered against the lands of a customer that has not made any payments to the Company since the Date of Appointment and therefore in the Receiver’s view there is no claim against the Property.

52. A summary of the Liens, the status thereof and the Receiver's recommendation is providing below.

Registration Number	Lien claimant	Amount	Date Registered	Status
122864801	Onsite Blast Ltd.	93,164.53	April 27, 2018	Amount plus 25% for costs held in trust with Receiver's Counsel
1800760	Tomco Industrial Ltd.	72,880.50	May 22, 2018	Amount plus 15% for costs paid into Court
Total - Paid into Court / Trust		166,045.03		
182123585	Redriver Galvanizing	51,018.30	May 29, 2018	Receiver to determine validity and enforceability, holdback full amount
1800855	Hi-Way 9 Express Ltd.	35,647.84	June 11, 2018	Receiver to determine validity and enforceability, holdback full amount
Total - Holback		86,666.14		
1800646/47	Metalex Metal Buildings Inc.	119,141.87		Receiver's view there is no claim against the Property, no holdback

PROPOSED INTERIM DISTRIBUTION

53. The Receiver has received an opinion from the Receiver's Counsel opining that the ATB Security is, subject to the usual assumptions, validly authorized, executed, issued and registered. Given the realization of the Property is substantially complete, the Receiver does not anticipate the recoveries will be sufficient to repay the ATB Secured Loan in full. Accordingly, it is the Receiver's view that ATB is the fulcrum creditor in the Receivership Proceedings.

54. As detailed above, the Receiver current holds approximately \$8.0 million. The table below presents a summary of the Receiver's sources and proposed uses of the funds on hand including an Interim Distribution of up to \$6,982,310 million to ATB and a holdback of \$1,008,968 million to be retained by the Receiver on account of the following:

- (a) the remaining costs to complete the administration of these Receivership proceedings including the completion of certain post-closing matters associated with the TSA and payment of any remaining operating expenses;
- (b) a holdback for professional fees to complete the administration of the Receivership Proceedings; and
- (c) to account for any claims which may have priority over the security of the Secured Creditor including the Deemed Trust Claim, the Lien Fund and the Expected Priority WEPP Claims,

(collectively, the “**Holdback**”).

Interim Distribution CAD \$	
Sources	
Cash on Hand	7,991,278
Holdback	
G&A	293,644
Deemed Trust Claim	250,185
Professional Fees	190,000
Post-receivership GST to remit	123,996
Lien Fund	86,666
Operating expenses	32,640
Expected Priority WEPP Claim	31,837
Total - Holdback	1,008,968
Total - Interim Distribution	6,982,310

55. As at April 17, 2018, the total amount owing under the ATB Secured Loan was approximately 12.8 million. The Receiver is seeking an Order from this Honourable Court to make the Interim Distribution to ATB in an amount that is significantly below the amount of the total indebtedness owing to ATB.

56. The Receiver anticipates that a further distribution to ATB will likely be made in the future, upon the completion of the following, and subject to the approval of this Honourable Court:

- (a) the completion of the TSA;
- (b) collection of the remaining accounts receivable;
- (c) resolution of the various priority claims discussed above; and
- (d) potential resolution of the dispute with the Company's customer regarding the \$1.0 million in pre-receivership accounts receivable.


RECEIVER'S RECOMMENDATIONS

57. The Receiver respectfully requests that this Honourable Court grant the following relief:


- (a) approving the Receiver's activities to date, including its receipts and disbursements; and
- (b) authorizing the Receiver to make the Interim Distribution and retain the Holdbacks.

All of which is respectfully submitted this 19th day November 2018.

FTI Consulting Canada Inc.,
in its capacity as receiver of Gemini
Corporation and Gemec Services Ltd.



Deryck Helkaa, CPA, CA, LIT
Senior Managing Director



Dustin Olver, CPA, CA
Managing Director